

RICHARD W. RENWICK
(ON RECONSIDERATION)

IBLA 83-565

Decided January 27, 1984

Petition for reconsideration of Richard W. Renwick, 76 IBLA 57 (1983).
Reconsideration granted; prior decision reversed; case remanded.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases:
Applications: Filings

Where a simultaneous oil and gas lease application bears a date earlier than the commencement of the filing period, but was dated and signed during the filing period, and it is established that the misdating was merely inadvertent and not done with an intent to obtain a lease by fraud, the misdating is a nonsubstantive error which does not require the rejection of the application.

APPEARANCES: Thomas E. Cahill, Esq., Cheyenne, Wyoming, for appellant; Phillip D. Barber, Esq., Denver, Colorado, for Jack J. Grynberg.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

In Richard W. Renwick, 76 IBLA 57 (1983), the Board affirmed a decision of the Wyoming State Office, Bureau of Land Management (BLM), which rejected appellant's simultaneous oil and gas lease offer W 84458 because the application was not dated within the filing period. The application, for parcel WY-536, was dated "1-11-82" rather than "1-11-83." Following prior Board decisions, we held that the responsibility for any error in the dating of the application, even though inadvertent and not representative of the actual date of signing, rests with the applicant, Raymond N. Joeckel, 68 IBLA 195 (1982), and that strict compliance with the requirements of 43 CFR 3112 is required to protect the rights of other qualified applicants, Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). 1/

1/ The regulation in effect at the time the decision was rendered, 43 CFR 3112.2-1(c), reads: "The name of only one citizen, association, corporation or municipality may appear as applicant on any application. The application shall be dated at the time of signing. The date shall reflect that the application was signed within the filing period." The regulations covering

[1] In light of the recent Tenth Circuit Court of Appeals decision, Conway v. Watt, 717 F.2d 517 (10th Cir. 1983), we granted a petition for reconsideration of our decision in Renwick, supra. The Tenth Circuit Conway decision reversed the Federal District Court's decision in Conway v. Watt, No. C82-0029 (D. Wyo. July 12, 1982), which had affirmed the Board's decision in Joe Conway, 59 IBLA 314 (1981). This Board held in Conway that the failure to date a simultaneous oil and gas lease application required rejection of the application.

The appeals court stated in Conway at page 516:

Although offers to lease must strictly comply with the Secretary's regulations, this court has consistently intimated that nonsubstantive errors are inappropriate grounds for finding DEC [drawing entry card] applications defective. Ahrens v. Andrus, [690 F.2d 805 (10 Cir. 1982)] at 808; Winkler v. Andrus, 594 F.2d 775, 777-78 (10th Cir. 1979). * * *

Inasmuch as the great weight of judicial authority places little or no emphasis on the absence of a date, Conway's failure to date his DEC would indeed appear to be a de minimis, a nonsubstantive error.

Thus, the court concluded that although a date could be required, the failure to date could not be a per se disqualification, and that if the Secretary were concerned with fraud, he could require evidence that the application was signed on a qualifying date and that all other qualifications were satisfied as of that date. Conway v. Watt, supra at 517.

The present case does not involve a failure to date, but a misstatement of the application date: January 11, 1982, rather than January 11, 1983. We are aware that it is common for one dating a document at the beginning of a new year to carry over the prior year's date.

In a supplemental statement of reasons, appellant asserts that the misdating of his application was an inconsequential and trivial error which misled no one and raised no suspicion of fraud. He points out that, though misdated, his application was in fact signed and dated within the filing period and that BLM personnel could easily have determined these facts by requesting additional information from him. Appellant contends that rejection of his application is contrary to the objectives of the simultaneous program and inconsistent with the Tenth Circuit's decision in Conway, supra.

fn. 1 (continued)

oil and gas leasing on Federal lands were revised, effective Aug. 22, 1983. The new regulation, section 3112.2-1(c), now reads: "The application shall be signed and dated at the time of signing. If signed by anyone other than the applicant, the application shall show the relationship of the signatory to the applicant. The date shall reflect that the application was signed within the filing period." 48 FR 33678 (July 22, 1983).

Jack J. Grynberg, the second priority drawee for parcel WY-536 has filed an appearance and pleadings opposing reconsideration. ^{2/} Grynberg points out that Conway differs from the case at bar because in Conway no date was entered on the application. Grynberg argues that an application with an erroneous date, unlike one with no date at all, suggests, on its face, an improper or erroneous filing. He notes that the Conway decision does not address the question whether an erroneous or incorrect date renders an application defective.

While we agree that different inferences might be drawn from an undated as opposed to a misdated application, we venture no opinion as to which of the two is more likely to raise a suggestion of fraud. In any event, no intimations of fraud are present in this case. Therefore, this is a proper case for the application of the Conway rationale that nonsubstantive errors are inappropriate grounds for rejecting simultaneous oil and gas lease applications. See Amberex Corp., 78 IBLA 152 (1983); Charles Fox and George H. Keith, Partnership, 77 IBLA 199, 203 (1983).

Accordingly, pursuant to the authority delegated to the Board of Land appeals by the Secretary of the Interior, 43 CFR 4.1, the Board's decision in Richard W. Renwick, 76 IBLA 57 (1983), is reversed; BLM's decision rejecting appellant's lease offer W 84458 is vacated; and the case is remanded for further consideration of the lease offer.

R. W. Mullen
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Anne Poindexter Lewis
Administrative Judge.

^{2/} Among other things, counsel for Grynberg questions the authority for reconsideration. Reconsideration is authorized where in the judgment of an Appeals Board sufficient reason exists therefore. 43 CFR 4.21(c). Although there is no specified time limit for seeking reconsideration, petitions must be "filed promptly." In the case before us, the petition was filed and granted well within the 90-day statute of limitations for seeking judicial review of the Secretary's decisions regarding oil and gas leasing, 30 U.S.C. § 226-2 (1976). Had petitioner not filed with this Board, he could have filed for review with the district court.

